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IN THE
Supreme Court of the United States

OCTOBER TERM 1957

No. ~~278~~ 34

WILLARD UPHAUS,
Appellant,
v.

LOUIS C. WYMAN, Attorney General, State of
New Hampshire,
Appellee.

On Appeal From the Supreme Court of New Hampshire

BRIEF IN OPPOSITION

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IN THE
Supreme Court of the United States

OCTOBER TERM 1957

No. 778

WILLARD UPHAUS,

Appellant,

v.

**LOUIS C. WYMAN, Attorney General, State of
New Hampshire,**

Appellee.

On Appeal From the Supreme Court of New Hampshire

BRIEF IN OPPOSITION

Each of appellee's arguments in his motion to dismiss is equally applicable to *Sweezy v. State of New Hampshire*, 354 U. S. 234. This Court's decision and denial of the petition for rehearing in that case are necessarily dispositive of appellee's present motion.

Nevertheless, some of appellee's statements call for brief comment.

1. Appellee first argues that no federal question is presented because the "subject matter" of the investigation was "subversion against the State Government" (p. 2). This argument confuses two different matters: the alleged legislative purpose and the appellant's constitutional rights.

2. Appellee next seeks to meet this Court's conclusion in *Sweezy* that the enabling resolution was too vague to constitute a source of appellee's authority. In support, appellee cites a legislative resolution of July 10, 1957 relating to Dr. Sweezy (p. 5). Since the resolution referred to Dr. Sweezy, not to appellant herein; considerably post-dates appellant's alleged contemptuous conduct; and was unsuccessfully presented to this Court in the petition for rehearing in *Sweezy*, it cannot aid appellee herein.

3. Appellee next asserts that the particular information sought by him was relevant to the "legislative inquiry" (p. 7) and, thus, he says, no federal question is involved. To this assertion we make the following response:

(a) This Court's principal opinion in *Sweezy* found the enabling resolution too vague a basis under the Fourteenth Amendment to compel answers to appellee's question.

(b) Mr. Justice Frankfurter's concurring opinion in *Sweezy* upheld "the right of a citizen to political privacy," 354 U. S. 234, 266-7, in the absence of substantial evidence of state necessity. The record herein equally lacks proof of such necessity. Lectures at appellant's private camp are as much protected by the First Amendment as those at a public educational institution.

(c) Here, two judges dissenting in the Court below declared that "enforcement of the subpoena goes beyond the inquiry here relevant in *Wyman v. Sweezy* (Juris. St., p. 33) and that "so slim a semblance of pertinency is not enough to justify inquisition violative of the First Amendment." (*Ibid.*, quoting *Rumely v. United States*, 197 F. (2d) 166, 172, affirmed 345 U. S. 41.)

4. Appellee's argument that the *Sweezy* case is not controlling because of the Resolution of July 10, 1957 is dis-

cussed above at page 2. *Barenblatt v. United States*, — Fed. 2d —, No. 787, Oct. Term, 1957, in which the Court of Appeals for the District of Columbia divided sharply shows the existence of substantial federal questions.

5. Appellee's present attempt to distinguish *Sweezy* on the ground that appellant's case does not involve "the academic freedoms" is rather odd since in *Sweezy* appellee heavily relied upon the state's right to inquiry "into what is said in any lecture." (*Sweezy v. New Hampshire*, *supra*, Petition for Rehearing, p. 5.)

6. Appellee's reference to a state law requiring hotel keepers to keep guest lists for examination by a police officer is completely irrelevant to the issues herein. World Fellowship is a charitable corporation operating a non-profit summer camp (Juris. St., p. 6); it is not a hotel keeper. No sheriff or police officer has sought to examine World Fellowship's books for the routine purposes underlying such procedures. Instead, this is a political inquiry by the Attorney General into matters protected by the First and Fourteenth Amendments.

7. Appellee states that the appellant "is not being forced to talk himself into jail nor into a prosecution" (p. 17). However, appellant is being compelled to choose between violating his conscience against giving the names of innocent persons to appellee to be bandied about and harassed, and spending the balance of his life in jail.

8. Appellee denies that he relies for relevancy upon the membership of appellant and guest speakers at World Fellowship in organizations listed by the Attorney General (p. 7). See *Wieman v. Updegraff*, 344 U. S. 183. However, appellee's entire argument, as summarized in the five points on pages 13 and 14, rests almost wholly on the concept that membership in such an organi-

zation is *prima facie* evidence of guilty association. Appellee states that "there is no charge at this point in the proceeding that Willard Uphaus is subversive" (p. 7). But he adds " * * * yet there is a record of association with persons and organizations which is replete with Communist activities throughout the years * * * " (*ibid.*).

That this is the gravamen of the charge of relevancy is borne out by appellee's listing of persons prominent in the liberal movement of America "many of whom have substantial public records of membership in organizations repeatedly cited as subversive or Communist controlled" (p. 14).

No such organization has been found, after a hearing affording due process, to be either subversive or Communist-controlled. It is the genius of our democratic system that Americans have united in voluntary associations peacefully to advocate reform and that such right of association is protected by the First Amendment. That a small religiously motivated pacifist summer camp in the mountains of New Hampshire should raise a question in appellee's mind on the record here, as to whether it is "a incubation spot (*sic*) for subversion, intrigue and potential espionage and sabotage against the United States and the State of New Hampshire" (p. 15) is indicative of fears inconsistent with the demands of freedom.

9. It is premature to join appellee in a full argument upon the applicability to legislative investigations of *Pennsylvania v. Nelson*, 350 U. S. 497. We respectfully refer the Court to our Jurisdictional Statement in No. 332, Oct. Term 1957, pp. 9-10, 12, which sufficiently shows the existence of a substantial federal issue never adjudicated by this Court.

In conclusion:

1. The apparent purpose of appellee's motion herein is to prove that this Court erred in *Sweezy*; that argument

alone establishes the existence herein of substantial federal questions.

2. *Sweezy* will be controlling on the merits since the considerations reflected in the opinions of the Chief Justice and of Mr. Justice Frankfurter are equally applicable here.

3. Unlike the situation in *Sweezy*, two of the justices below dissented in part on the ground that appellant's federal constitutional rights were invoked.

Respectfully submitted,

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March 25, 1958.